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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,441	10/15/2001	Cole Williams	99047A	5015

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EXAMINER

AFTERGUT, JEFF H

ART UNIT

PAPER NUMBER

1733

7

DATE MAILED: 07/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/978,441

Applicant(s)

WILLIAMS, COLE

Examiner

Jeff H. Aftergut

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1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT WO 98/19569 or Williams '226 further taken with either one of Town or PCT WO 92/07480 and any one of Harreld et al, Baker et al or Mathis et al for the same reasons as expressed in paper no. 2, paragraph 2.

Regarding the newly amended claims, the applicant is advised that while the references to Williams and PCT '569 do not provide the bladder with a "smooth glazed extremity engaging portion, this is a function of the position of the bladder in the multilayer arrangement. Note that the bladder material of Williams and PCT '569 are the same materials as defined by applicant. Additionally, note that the reference to either one of Town or PCT '480 clearly envisioned that in a sock or glove one skilled in the art would have provided the outer fabric layer as the largest layer of the multilayer assembly. Such would have resulted in an assembly which had a bladder which was shorter than the exterior fabric layer and longer than the inner fabric material. The resulting assembly would have had a bladder which contacted the wearer at the upper end of the article. Additionally, the references to any one of Harreld et al, Baker et al or Mathis et al expressly suggested that those skilled in the art would have incorporated a cuff at the end of the article to be worn in order to seal the article from entrance of water and/or moisture. The application of such an end cuff on the so modified sock would have clearly provided a means to press the interiorly disposed bladder against the skin of the wearer preventing migration of water and/or moisture into the sock. With respect to the newly submitted claims, the applicant is

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advised that the references to Town or PCT '480 would have suggested the lengths of the various layers in the multiply assembly wherein one skilled in the art would have incorporated an exterior layer which was larger than a bladder and wherein the interior layer of the bladder was smaller in length than the bladder. The references to any one of Harreld et al, Baker et al or Mathis et al suggested that those skilled in the art would have incorporated a cuff about the top of the article of clothing to prevent migration of water and/or other fluids. It would have been obvious to one of ordinary skill in the art at the time the invention was made to arrange the layers in the specified order of lengths as suggested by either one of Town or PCT '480 wherein the exterior layer included a cuff disposed about the end thereof in order to prevent the passage of fluid such as water into the article of clothing as suggested by any one of Harreld et al, Baker et al or Mathis et al in the socks of either one of PCT '569 or Williams.

For a more complete discussion of these references the applicant is referred to paper no. 2, paragraph 2.

Response to Arguments

3. Applicant's arguments filed 6-2-03 have been fully considered but they are not persuasive.

The applicant argues that the claimed invention was not suggested by the prior art of record. While applicant's representative is correct in his analysis that no single reference anticipated the claimed invention as presented, it is the Office position that modification of PCT '569 or Williams '226 would have been obvious (and one would have been motivated to make the identified alterations to either one of PCT '569 or Williams '226 for the reasons discussed

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previously) to the ordinary artisan at the time the invention was made. As a result of the proposed modifications (which would have been motivated as suggested by the prior art itself), the resulting article of clothing would have the end resulting product as claimed as well as the specified properties of water tightness. It should be noted as discussed herein below, the use of a cuff on the exterior edge of an article of clothing was notoriously well known for example in socks in order to hold the same in place. The incorporation of a cuff on the socks of either one of Williams '226 or PCT '569 would have been within the purview of the ordinary artisan if not for this reason alone. To further evidence that those skilled in the art would have incorporated a cuff at the top portion of the fabric exterior layer the references to Harreld et al, Baker et al or Mathis et al are cited.

The applicant argues that neither one of Williams '226 or PCT 569 suggested a bladder adapted to enclose one portion of the user's extremity such as a user's foot and a second portion adapted to sealingly engage another portion of the user's extremity as, for example, the skin of the lower leg portion of the user. While neither one of the references taught the same, the incorporation of the bladder in the sandwich construction as defined by either one of PCT '480 or Town (where the length of the bladder was less than the length of the exterior layer but greater than the length of the interiorly disposed layer) would have resulted in a bladder which was capable of not only enclosing one portion of the user's extremity but also of sealingly engaging another portion of the user's extremity by contact with the skin of the user in the sealing zone. While the references to Williams '226 or PCT '569 do not expressly state that the bladder has a surface which is glaze-like, the bladder is made of the same materials as applicant and the bladder is of a similar thickness to that claims. One would have expected that like materials

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would have had like properties and thus it is reasonable to assert that the bladder of Williams '226 or PCT '569 would have had the same properties as defined in the claims.

The applicant does not dispute that the references to Town or PCT '480 suggested the specified arrangement of layers. Instead, applicant argues that none of these references suggested the bladder engaging the wearer at one end and enclosing the extremity at the other. The applicant is advised that while neither reference suggested the same, modification of Williams or PCT '569 according to the techniques of Town or PCT '480 would have resulted in the specified arrangement with the bladder engaging portion. While there is no express teaching that the bladder would have been pressed against the skin of the wearer, application of an end cuff about the exterior layer of the article would have necessarily resulted in the same as suggested by any one of Harreld et al, Baker et al or Mathis et al. the applicant is advised that the incorporation of a cuff about the exterior of the sock would have resulted in a finished assembly which had the bladder pressed at the end of the article against the skin of the wearer.

Regarding the references to Harreld et al, Baker et al or Mathis et al, the applicant argues that while each of these references suggested that one skilled in the art knew to associate a cuff with the end of an article of apparel in order to better make the same waterproof and/or fluid resistant, that these references did not include a bladder which engaged the wearer in use. While it is correct that these references did not include a bladder as defined, they need not. The references to Williams or PCT '226 suggested the same. Additionally, incorporation of a cuff at the end of the article of apparel would have resulted in the formation of an article which included a skin contacting bladder as discussed above wherein the skin contacting bladder would have been retained against the skin with the use of the elastic cuff. Applicant focuses on Mathis and

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expressly suggests that the cuff of Mathis does not have the specified construction, however the specific construction of the cuff is not recited in the claims but rather a cuff at the extremity of the article for retaining the same in place against the user is. Mathis et al suggested such.

Because one skilled in the art would have incorporated the modifications proposed to include an elastic about the exterior end of the article of clothing as suggested by any one of Harreld et al, Baker et al or Mathis et al and because one would have incorporated the ordering of plies to incorporate the shortest ply on the interior and the longest ply on the exterior as proposed by PCT '480 or Town, the claimed operation would have resulted in the claimed article of manufacture where the bladder contacted the skin of the extremity in a sealing engagement.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
July 2, 2003